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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEJANDRO GUTIERREZ,

Defendant and Appellant.

G050594

(Super. Ct. No. 14CF1104)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, John S. Adams, Judge. Affirmed as modified.

Jan B. Norman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, A. Natasha Cortina and Christine Levingston Bergman, Deputy Attorneys General, for Plaintiff and Respondent.

FACTS AND PROCEDURAL HISTORY

In March 2014, Alejandro Gutierrez attempted to steal an acetylene tank from the back of a plumber's truck. The plumber took exception, and Gutierrez attacked him and threatened to kill him. One of the plumber's coworkers called 911. Police responded and arrested Gutierrez.

Gutierrez was charged with attempted second degree robbery, making a criminal threat, and possession of methamphetamine. He pled guilty to possession of methamphetamine, and a jury found him guilty of misdemeanor attempted petty theft and felony making a criminal threat. The trial court found true allegations Gutierrez had a prior strike and serious felony conviction, and that he had served two prior prison terms.

The court struck Gutierrez's strike and prison priors for sentencing purposes pursuant to Penal Code section 1385, subdivision (a), and imposed a total term of six years and four months. The court imposed the low term of 16 months for making a criminal threat, a concurrent 16-month term for possession of methamphetamine, and a consecutive five-year term for the prior serious felony conviction. Various fines and fees were ordered, and the court awarded Gutierrez 272 days of presentence custody credits. Several months later, the court granted Gutierrez's Penal Code section 1170.18, subdivision (a) petition for recall and resentencing thereby reducing Gutierrez's felony drug-possession conviction to a misdemeanor.

DISCUSSION

Gutierrez asserts the court's minute order from the August 15, 2014, sentencing hearing is incorrect because it states the court exercised its discretion to strike priors under Penal Code section 1385, subdivision (c). The Attorney General concedes the court's minute order must be corrected, and we agree.

DISPOSITION

The clerk of the court is directed to correct the court's August 15, 2014 minute order to reflect that the court exercised its sentencing discretion to strike Gutierrez's prior convictions under Penal Code section 1385, subdivision (a). In all other respects, the judgment is affirmed.

THOMPSON, J.

WE CONCUR:

O'LEARY, P. J.

FYBEL, J.